

Appl. No. 10/602,198
Amendment dated March 14, 2006
Responsive to Office Action dated December 14, 2005

Remarks

This is responsive to the Office Action dated December 14, 2005 in which claims 1-4, 6, 7, 9, 12-16, 18 and 25-31 were examined. Claims 5, 8, 10, 11 and 17 were withdrawn from consideration and Applicants have cancelled those claims herein. As a result of this amendment, claims 1, 3, 4, 6, 7, 9, 12, 15, 16, 18, 25 and 27-37 are now pending in this application.

All of the claims previously pending in this application were rejected as being obvious over the identified prior art. Applicants respectfully request reconsideration of the now pending claims and those rejections in light of the following comments and remarks.

Claim 14 was rejected under 35 U.S.C. § 112. However, claim 14 has been cancelled herein thereby rendering the § 112 rejection moot.

Claims 7, 16, 29 and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,244,001 (Anastasi) in view of U.S. Patent No. 5,473,851 (Northrup, Jr.) and further in view of Swiss Patent No. 657,662 (Boschetti). Claims 7, 16, 29 and 31 were previously dependent claims and Applicants have amended each of those claims herein to be placed in independent form because Applicants respectfully traverse the § 103 rejection of these claims. As a result, Applicants have not substantively amended these claims and request reconsideration of the rejections based on the following comments and remarks.

One feature of the invention in claims 7, 16, 29 and 31 is that the surround device includes a second leg which is made of a closed cell foam material and a frangible connection in the second leg which comprises perforations in the closed cell foam material. The rejection states that "Boschetti shows a frangible connection (7) comprising perforation (the indented holes, not through hole) in a foam material, the frangible connection being spaced from one another." After studying the Boschetti reference, Applicants respectfully assert that Boschetti fails to teach, disclose or

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otherwise suggest a closed cell foam material, a frangible connection or perforations as relied upon in the rejection.

The Boschetti reference is not in English and the copy of the reference provided to Applicants' undersigned attorney from the Examiner did not include an English language translation of any part of the Boschetti reference. If the Examiner has relied upon a translation of the Boschetti reference to formulate the rejection, the Examiner is kindly asked to provide a copy such translation to the undersigned attorney for a better understanding of the reference and associated rejection.

Applicants have obtained from the European Patent Office website a copy of an English language translation of the abstract for the Boschetti reference. The English language abstract reads as follows:

Method for rapidly making windows and doors with multiple panes and window or door made using the method

Abstract of CH657662

The method makes it possible rapidly to make windows or doors with multiple panes with a frame (1, 1' - 2, 2') made of profiles of plastic material, or wood. To this end, the panels with multiple panes (4) are prepared away from the place of application to the frame, that is to say in a suitable factory, and are sealed hermetically at the periphery within a suitable surrounding metal case (7). Connection is carried out perfectly with hermetic sealing by means of a polymerisable cement. The case has a peripheral channel (7') which allows the introduction with play of the headpieces (6') of small retention plates (6) which are fixed into the cavities (9) provided in said frame (1, 1' - 2, 2'). The small plates (6) have elastic end branches which are possibly knurled or incised and their headpieces (6') can move freely in all directions within said peripheral channel (7') of the case (7) so as to adapt exactly to the position of the cavity (9) provided in said profiles (1, 1' and 2, 2') of the frame. (emphasis added)

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Accordingly, Applicants understand that the Boschetti reference is directed to a method of making multiple pane windows and doors. As such, Applicants respectfully assert that such a reference is non-analogous to the inventions claimed herein.

Nevertheless, the Boschetti abstract discloses that element 7 is a "suitable surrounding metal case" utilized to "hermetically" seal the multiple pane assembly of that invention. From this information, Applicants understand that Boschetti does not disclose, teach or otherwise suggest a frangible connection, perforations or a foam material as in the presently claimed inventions of claims 7, 16, 29 and 31. Clearly, one of ordinary skill in the art, with respect to the presently claimed invention, would not rely upon the Boschetti reference which teaches hermetically sealing an assembly with a metal surrounding case. The closed cell foam material clearly is not capable of performing the hermetically sealing function required of the surrounding metal case in Boschetti or vice versa.

As a result, Applicants have not substantively amended claims 7, 16, 29 and 31, but merely recast them in independent form to traverse the rejection based at least in part on Boschetti. Applicants respectfully asserts that claims 7, 16, 29 and 31 are patentably novel and non-obvious over the cited references including Boschetti and request that these claims be allowed.

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Claims 1-4, 6, 9, 12-15, 18, 25-28 and 30 were rejected as being unpatentably obvious over Anastasi in view of Northrup, Jr. The rejection states that Anastasi shows the various features of the rejected claims including a "frangible connection (the mid-section, the claim is not specific as to what structure constitutes frangible) joining the terminal end portion to remainder of the second leg." According to the rejection, Anastasi only lacks a disclosure that the second wall comprises courses of masonry units held together with mortar and that Northrup, Jr. discloses such a wall. The rejection states that the first panel 12 in Anastasi is the claimed first leg of Applicant's invention. The rejection states that the claimed second leg of Applicants' invention is element 85 in Anastasi. According to the Anastasi reference, element 85 is a sealant system "such as a preformed caulking and backer rod that is adhered to the exterior wall structure 68 and, in the use illustrated, the window system 62." (Col. 3, lns. 5-7.)

Applicants respectfully assert that the Anastasi and Northrup, Jr. references alone or in combination do not teach, disclose or otherwise suggest Applicants' claimed invention in claims 1, 3, 4, 6, 9, 12, 15, 18, 25, 27, 28, 30 and 32-37. Of those claims, nos. 1, 12 and 25 are independent claims. In those claims, Applicants' invention is described as a surround device having first and second legs. Based upon the disclosure in Anastasi, Applicants respectfully assert that element 85 is not a part of the flashing disclosed in that prior art reference, but merely a sealant system added to the

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final installation. As such, element 85 cannot be considered one of the legs of the device. In fact, Anastasi itself describes the flashing element disclosed in that patent as a three panel device in which "first panel 12, second panel 14 and third panel 16 are made from a semi-rigid material such as polypropylene and formed as a unitary piece by a conventional molding process." (Col. 2, Ins. 45-48.) Therefore, Applicants respectfully assert that the rejection does not present a *prima facie* case of obviousness in that element 85 is not a second leg of the surround device as presented in Applicants claims.

With respect to the frangible joint which is recited in each of the now pending independent claims (nos. 1, 12 and 25), the Office Action indicates that the original claims were not specific as to what structure constitutes "frangible." Applicants undersigned attorney understands this interpretation by the Examiner to mean that any portion of the identified member could be broken from an adjacent portion thereby defining a frangible connection. If this understanding is incorrect, the Examiner is kindly asked to clarify the rejection.

Independent claims 1, 12 and 25 as presented herein each recite a frangible joint "connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg." The term "frangible" as used herein is to have its standard dictionary definition which is as an adjective meaning "readily or easily broken" (Webster's 9th New Collegiate Dictionary). The frangible joint indicates a structure in the second leg which is more

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readily broken than the remainder of the second leg. As such, the claim term is specific as to the structure that constitutes the frangible joint. Examples of such a frangible joint are shown in Applicants' Fig. 6 as reference numerals 72.

Therefore, Applicants submit that the Anastasi reference as understood by one of ordinary skill in the art fails to teach, disclose or otherwise suggest a frangible joint as now claimed in each of the independent claims 1, 12 and 25 as well as the associated dependent claims. Irrespective of whether the second leg is considered to be the sealant system 85 or the panels 14 or 16 in Anastasi, none of these structures disclose a frangible joint as described.

Moreover, new dependent claims 32-37 provide additional distinguishing features and aspects of Applicants' invention which are likewise neither disclosed, taught or suggested in the Anastasi, Northrup, Jr. or other prior art of record.

As a result, Applicants respectfully assert that the prior art rejections under § 103 based on Anastasi and Northrup, Jr. alone have been overcome. Additionally, as far as claims 7, 16, 29 and 31 are concerned, the deficiencies described with respect to the Anastasi reference also apply to those rejected claims in addition to the basis for overcoming the rejection of claims 7, 16, 29 and 31 with respect to the Boschetti reference previously discussed.

Therefore, Applicants respectfully request Notice of Allowance with respect to the pending claims at the Examiner's earliest convenience. If the Examiner

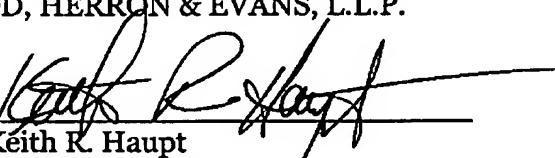
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feels that any matter in this case requires further attention prior to issuing a Notice of Allowance, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved.

Respectfully submitted,

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